Key Elements of Caregiver Agreement

By Lucy Lazarony • March 17, 2012

A contract between a family caregiver and an ailing or aging relative can be called a lot of different things: a caregiver agreement, a personal-care contract, a personal-service contract and, finally, a family care contract.

Whatever you choose to call it, the key elements are the same. They include the start date and duration of the caregiving agreement, a listing of caregiving services and the terms of the financial compensation paid to the family caregiver.

**A start date for caregiving services.** Each agreement should include a specific start date when services begin.

Any caregiving services provided prior to the start date of the contract are excluded from the contract, says Howard S. Krooks, vice president of the National Academy of Elder Law Attorneys.

"You can't go back. You can't do it retroactively," Krooks says.

**A detailed listing of caregiver services.** Family caregivers provide myriad services for ailing and aging family members. They may include assistance with giving personal care, grocery shopping, preparing meals, housekeeping, coordinating household bills and financial management, driving family members to and from doctor or physical therapy appointments, and monitoring and managing medications.

Be as specific as possible when detailing a caregiver's tasks and services.

"You have to be as specific in the hiring of a family member as you would be in the hiring of a stranger," Krooks says.

**Financial compensation paid to the caregiver.** Caregivers typically charge an hourly rate for their services and receive payments in weekly or monthly installments. Caregivers also can be paid in lump-sum payments for their services.

How much to pay a family caregiver is a family decision. Looking at how much a home care agency, geriatric care manager or other third-party company would charge for providing similar services is a good place to start.

"Usually you're talking about maybe $20 to $25 an hour," Krooks says.

Michael J. Amoruso, an elder law attorney in Rye Brook, N.Y., requires his clients set up a payroll service for paying family caregivers and that caregivers keep a care log, documenting caregiving services provided each day.
"You really want to make sure that it's structured and respected as a true employer-and-employee relationship," Amoruso says.

**Duration of the caregiver agreement.** The length of a caregiver agreement could be for as long as an elder's lifetime, or it could be as short as six months or a year. It's up to families to decide for how long they wish to establish the terms of a caregiving arrangement.

Amoruso suggests revisiting the terms of a caregiver agreement once a year.

"What if it's not working out?" he says.

The cost of hiring an elder law attorney to draft a caregiver agreement among family members varies. Krooks says an elder law attorney may charge $1,500 to $2,000 for drafting a personal-care contract. Amoruso says attorney fees for family care contracts are in the $3,500 to $7,000 range.

Joseph Matthews, an attorney and senior editor with Caring.com, says family members may be able to draft a caregiver agreement on their own without the help or cost of an attorney.

"This is not about some fancy legal document," Matthews says. "This is about an agreement among family members."

For a model caregiver agreement, he recommends using the Elder Care Agreement (Form 85) in the book "101 Law Forms for Personal Use" by Ralph Warner and Robin Leonard.

For families interested in drafting a lump-sum payment arrangement for the lifetime of the care recipient, Matthews does recommend seeking the advice of an elder law attorney.

Calculating a lump-sum payment arrangement involves taking an estimated monthly rate paid to a caregiver and multiplying it by a parent's life expectancy. This type of caregiver agreement may be more challenging for families to draft without assistance.

Both Krooks and Amoruso suggest hiring an elder law attorney familiar with the specifics of Medicaid eligibility in your state when drafting any caregiver agreement.

The reason? Medicaid will review a family care contract should a parent move to a nursing home and apply for long-term care coverage under Medicaid.

Medicaid is a state and federal program that will pay most nursing home costs for people with limited income and assets. Eligibility for Medicaid varies by state.

"If you're looking at utilizing an individual's assets to pay a family caregiver, one would be foolish not to use a qualified elder law attorney because Medicaid eligibility is looming down the road," Amoruso says.